IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1676 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIHAJI KESHARSING CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR CL SONI for Petitioner

MR PK SHUKLA, ld.AGP for Respondents Nos.1 to 4

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/03/2000

ORAL JUDGEMENT

The petitioner has come with the case that he was running a fair price shop with a licence for the last 30 years. Earlier, the fair price shop's licence was only for foodgrains, sugar and edible oils etc. and in the

year 1997, the same was extended to kerosene also. When the shop was inspected by way of surprise checking on 30th July 1998, the position of the stock was taken and later on a show cause notice dated 4th September 1998 was issued to the petitioner. In this show cause notice, the following irregularities were pointed out.

(i) 190 litres of kerosene was disposed of;

(ii) On the day of checking, rates and stocks were not written on the Board;

(iii) Signature of customers were not taken on bill book;

(iv) At the time of checking 100 ltrs. blue coloured kerosene with barrel were found from each of the following two persons; viz. (a) Ghanchi Gasa Madha, (b) Bra Gordhan Amra. These two persons have informed that they bought the above stated kerosene from fair price shop at Piluda;

(v) The shop owner, the petitioner was asked to keep the above stated stock of 200 ltrs. seized from above persons but he refused to keep the same in his custody;

(vi) The kerosene sale register was not got signed; and

(vii) The samples of foodgrains were not kept in such a way that people could see them.

The petitioner was then required to remain present on 15th September 1998 and to give written explanation as to why the stock seized should not be confiscated and why the petitioner's licence should not be cancelled and in the meanwhile his licence had been suspended for one year. The petitioner filed reply to the aforesaid show cause notice submitting therein that he had not committed any irregularity and he also took the defence that the stock of 200 ltrs. of kerosene which is said to have been found from the two persons namely, Ghanchi Gasa Madha and Bra Gordhan Amra, and who had reported that they had bought the above said stock of kerosene from the petitioner from the petitioner's fair price shop had been purchased by them from other fair price shop at a distance of about 4 kms. and the petitioner had not sold any kerosene to these persons so

as to get the petitioner's licence cancelled. After taking into consideration the reply and hearing the petitioner, the District Supply Officer, Banaskantha, at Palanpur, passed an order on 25th September 1998 cancelling the petitioner's licence to run the fair price shop.

2. Learned Counsel for the petitioner has submitted that the copies of the statements of these two persons, namely, Ghanchi Gasa Madha and Bra Gordhan Amra had not been given to the petitioner. He has also submitted that no irregularity was found in the stocks with regard to other commodities and the only allegation in the show cause notice with regard to the other commodities was that the samples had not been displayed in such a manner that the public could see it. Learned Counsel for the petitioner has submitted that Clause 8 of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 provides for suspension or cancellation of licence for contravention of order or licence and according to this Clause, without prejudice to any other action that may be taken against the licence holder, the licence may be cancelled or suspended with regard to one or more essential articles by an order of the Licensing authority in writing. Learned Counsel has argued that so far as the articles other than kerosene are concerned, nothing was found against the petitioner and therefore, while passing the order, if at all the licence was to be cancelled, it should have been cancelled only with regard to the item of kerosene and the same should not have been cancelled in its entirety. It has also been argued with reference to the inspection note dated 30th July 1998 made in the visit book that the stocks of APL Chhokha was correct and there was no shortage and certain advisory instructions had been given to him. It is submitted that not displaying the samples so as to be visible to the public was a minor technical objection and nothing serious has been found against the petitioner with regard to the items other than kerosene.

3. Learned Asstt.Govt. Pleader has pointed out that the authorities have mentioned that it was futile to expect fair distribution from the petitioner, that in past also, he has been punished in two cases and looking to his past history, he was habitual of such irregularities. The Licensing authority has mentioned in its order that the petitioner was charging high rates from the poor people and was selling all the commodities in black market and therefore, it was futile to expect fair distribution from the petitioner. The people of the village had also expressed that the petitioner was a head

strong person and was making wrong entries in the Cards and therefore, in public interest, the shop should not be allowed to run. Against this order dated 25th September 1998, passed by the Licensing authority, District Supply Officer, Banaskantha, at Palanpur, the petitioner preferred an appeal before the Collector, Banaskantha, at Palanpur, and that appeal has been decided by the order dated 30th October 1998. It is submitted that during the pendency of the appeal, the petitioner was allowed to run the fair price shop for commodities other than kerosene. Aggrieved from the order dated 25th September 1998, passed by the Licensing authority and the order passed by the Collector, Banaskantha, at Palanpur on 30th October 1998, the petitioner approached the State Government by way of revision and that revision application has also been rejected by the Government on 22nd February 1999. Aggrieved from these three orders passed by the Licensing authority, Collector, Banaskantha and the State Govt. the present petition has been filed.

4. So far as the grievance of the non-supply of the statements of two witnesses is concerned, learned Counsel for the petitioner has placed reliance on a decision of this Court reported in 1996 (2) GLR 127, in the case of Kiran Oil Ind. v. District Collector, Jamnagar. That was a case of confiscation of commodities seized under the Essential Commodities Act, 1955 and in that case the Court held that before passing order of confiscation, the authority was required to disclose to the dealer the material on which it seeks to rely on and consider the defence put forward and on finding that this was not done, the matter was remanded back. Learned Counsel has submitted that the same principle should apply even in the matter of cancellation of licence and the copies of the statements should have been supplied and since the order has been passed without supplying the copies of the statements, the order is vitiated. No such demand was made by the petitioner before the licensing authority after the case was detected against him and he was told of the charges in which the names of the two persons had been clearly mentioned. This ground is, therefore, not available to the petitioner.

5. Clause 8 of the Gujarat Essential Articles (Licensing, Control and Stock Declaration Order, 1981 is reproduced as under:

> "8. Suspension or cancellation of licence for contravention of Order or conditions of licence:- (1) No holder of a licence issued under this order or his agent or servant or any other person

acting on his behalf shall contravene any of the terms or conditions of a licence issued to him and if any such licence holder or his agent or servant or any person acting on his behalf contravenes any of the terms or conditions then, without prejudice to any other action that may be taken against him his licence may be cancelled or suspended with regard to one or more essential articles by an order of the licensing authority in writing:

Provided that no order shall be made by the licensing authority under this clause unless the licence holder has been given a reasonable opportunity of stating his case to that authority against the proposed cancellation or suspension not being suspension referred to in the sub-clause (2) during the proceeding for cancellation of a licence.

(2) When the licensing authority is prima facie satisfied that there is a case for cancellation of the licence it may suspend the licence for a period not exceeding 90 days during which period the authority shall consider and finally decide."

The licensing authority has power to cancel or suspend the licence with regard to one or more essential articles and therefore the licence can be cancelled for one or more items. It cannot be construed on the basis of this Clause 8 that if at all the licence was to be cancelled, it should have been cancelled only with regard to a particular item which was detected to be the subject matter of malpractice and violative of law and the same could not have been cancelled in its entirety. Learned Asstt. Govt. Pleader made a pointed reference to Clause 16 and has submitted that every dealer is under an obligation to display at a conspicuous place of his business premises, the daily opening stock of essential articles, wholesale or retail prices of such essential articles as the case may be and working hours in Gujarati language and in a manner so as to be easily accessible for consultation by the consumer. Clause 16 is reproduced as under:

"16. Opening stock, price and working hours to be displayed at place of business.-- Every dealer or producer shall display at a conspicuous place of his business premises, the daily opening stock of essential articles, whole sale or as the case may be, retail prices of such essential articles and the working hours in Gujarati

language and in a manner so as to be easily accessible for consultation by the consumer:

Provided that where any essential article is out of stock there shall be written in the display against the essential article the words "OUT OF STOCK" instead of the prices:

Provided further that where retail price of any essential article is fixed by the Central Government or the State Government or manufacturer or distributor, the retail price so displayed shall not exceed the retail price so fixed."

May be that with regard to other items the irregularity which was found was a minor one and the advisory instructions had been given to the petitioner in the visit book itself, but that does not absolve the petitioner from the obligation cast upon him under Clause 16. Therefore, in the facts and circumstances of this case, if the licence has been cancelled for all the commodities and as a whole and in its entirety, it cannot be said that the order stands vitiated on that count because the power of cancellation is there for one or more commodities. Thus, this ground raised by the petitioner challenging the order also fails.

6. The Collector, Banaskantha as well as the Licensing authority have also taken notice of the fact that looking to the past history of the petitioner, it was futile to expect fair distribution from the petitioner, that the petitioner had been punished twice in past and that he was habitual of committing such irregularities. A note has also been taken by the Licensing authority with regard to the grievance raised by the public that the petitioner was a head strong person and was making wrong entries.

7. Keeping the entirety of the matter in view, I do not find that it is a case in which the impugned orders as have been passed by the Licensing authority and the Collector, Banaskantha, and the State Government require any interference by this Court under Article 226 of the Constitution of India. It is an equitable jurisdiction and this equitable jurisdiction cannot be made available for the purpose of giving any relief to those who are found to be involved in violation of the licences issued with regard to the fair price shops. In the opinion of this Court, such fair price shops are part and parcel of the public distribution system and the public distribution system cannot be allowed to be put to rampage by giving reliefs in such cases on any technical

or hyper-technical grounds. There is no reason for this Court to believe that the mention made by the authorities with regard to the petitioner's past history and the two punishments given earlier is wrong or erroneous. The grievance of the public as has been noted by the Licensing authority clearly shows the malpractice on the part of the petitioner against the Public Distribution System. Such practices if ignored rather than being checked and punished, would certainly militate against the entire Public Distribution System and may result in further exploitation of the poor people who have to receive such items which are made available for them through fair price shops and the real beneficiaries of such system would stand deprived and the commodities which are meant to be used for fair price shops shall be sold out by such licence holders in the black market at higher prices so as to gain an undue benefit for them at the cost of the bonafide consumers of such fair price shops. In such cases, the petitioner cannot be heard saying that the irregularities which were pointed out with regard to the other stocks was only minor one. There is no question of minor or major so far as the Clause 16 is concerned. It uses the word 'shall' and therefore, the obligation cast under Clause 16 is an obligation which every licence holder for such fair price shop under such order has to follow and discharge strictly and in a distinct manner so that there is a total transparency in such transactions and such wholesome provisions which have been made for the benefit of the bonafide consumers are observed in letter and spirit and if any penal action for such violation is taken against such dealer or a licence holder, it must always work as an eye opener to the other licence holders who may be engaged in similar business so that there is no recurrence. Sch orders have a preventive and deterring effect against the other licence holders and such orders are also meant to send a correct signal and message to all such licence holders that lest they follow such conditions stringently, they are also liable to be punished. In the facts of the present case, I do not find that the impugned orders suffer from any infirmity so as to warrant any interference by this Court. The petitioner is not entitled to any relief in the equitable jurisdiction under Article 226 of the Constitution of India. There is no merit in this Special Civil Application and the same is hereby dismissed. The Rule is hereby discharged. In the facts and circumstances of this case, there shall be no order as to costs.

8. It has been submitted on behalf of the petitioner that he may like to apply for the licence afresh. In

case the petitioner moves any such application afresh, it will be open for the Licensing authorities to consider the same in accordance with law.

(M.R. Calla, J.)

******

Sreeram.